



April 1, 2024

Sent Via Electronic Delivery: 2024-NPRM-OVERDRAFT@cfpb.gov

Comment Intake
2024 NPRM Overdraft
c/o Legal Division Docket Manager
Consumer Financial Protection Bureau
1700 G Street NW
Washington DC 20552

Re: CFPB Proposed Overdraft Lending Rule – Financial Institutions (RIN 3170-AA42 and CFPB 2024-0002)

Dear Legal Division Docket Manager:

On behalf of the Oregon Bankers Association (“OBA”) and its membership of Oregon state and national banks, we appreciate the opportunity to comment on the above-referenced proposed rule (“Rule”) from the Consumer Financial Protection Bureau (“CFPB”). OBA is the full-service trade association for the banking industry in the state of Oregon. Our organization represents banks of all sizes and is the voice of the Oregon banking community before federal and state entities. We are very concerned that the Rule will adversely impact the availability of overdraft protection and low or no-cost checking accounts, ultimately hurting consumers who value these services.

Comments

Oregon banks have several concerns with the Rule and ask that the CFPB withdraw the proposal.

The proposed Rule and related comments from the CFPB mischaracterize overdraft fees as “junk fees” despite overdraft protection being contractually negotiated and overdraft fees being disclosed to customers. The Federal Reserve in its 2009 overdraft “opt-in” rule ensured that customers have information necessary to make informed decisions about overdraft protection. Customers must opt-in before a bank may charge a fee for an overdraft from one-time debt card and ATM transactions and can opt-out at any time. In survey data gathered by our national banking partners, the vast majority of consumers find their bank’s overdraft protection program valuable. A similarly large majority of those paying an overdraft fee were glad their bank covered the payment rather than declining or returning it.

Many banks offer a variety of overdraft protection services. Moreover, banks help customers avoid overdraft fees by providing services like low balance alerts, linking a checking account to another account, or providing an overdraft grace period. Some banks have even stopped charging overdraft and NSF fees altogether.

Furthermore, many banks also participate in the Bank On initiative offering overdraft free accounts to those of modest means. While overdraft protection remains popular and many banks have adopted overdraft alternatives, the Rule, if adopted, will jeopardize overdraft programs and encourage banks to reconsider overdraft innovations. This will be to the detriment of consumers.

Beyond these general comments, the Rule as drafted has several specific problems. For instance, few banks will offer overdraft services under the Truth in Lending Act (TILA) and Regulation Z. The approach is unworkable and would create compliance risk and cost that isn't justified for the product in question. Therefore, to avoid having TILA and Regulation Z applied to an overdraft protection service, a bank would need to charge a "true courtesy" fee, which would either be the institution's "breakeven" cost or a benchmark fee set by the Rule.

To avoid regulatory scrutiny or a private lawsuit as to whether the "breakeven" cost – calculated by the bank – is deemed by the CFPB to reflect the actual cost to operate an overdraft program, banks will likely forego the "breakeven" approach and turn to the benchmark rate set by CFPB in the Rule. However, the proposed benchmark rates, which range between \$3 and \$14, won't cover the bank's cost to provide overdraft services to customers, much less cover the bank's broader costs to provide deposit accounts to customers. These costs include complaint review and response, branch services, core provider and technology costs, compliance costs, mailing costs for overdraft notices, and collection efforts. More broadly, price controls, such as the one contemplated by the benchmark rate, distort markets and the demand for delivery of products and services.

While the Rule purports to create an exemption for overdraft programs at banks with less than \$10 billion in assets, this exemption is illusory. Banks are participants in a competitive marketplace, and limitations on overdraft programs brought about by the Rule will pressure smaller banks to conform to thresholds established by CFPB for larger institutions. If a bank cannot offer overdraft protection at the benchmark fee established by the CFPB's Rule, the bank may be forced to end its overdraft protection coverage.

Based on these concerns, we have no doubt that, if adopted, the Rule will result in fewer banks offering overdraft services, thus denying customers payment in times where they have made an error or need access to short-term liquidity. Many customers do not have access to other forms of short-term liquidity or do not qualify for a line of credit. The unintended consequence of the Rule is to strip

customers of a valued service that can provide much needed assistance. Customers may be forced to turn to less regulated providers to compensate for the loss of overdraft services.

Conclusion

While the above items do not constitute an exhaustive list of potential issues, they highlight some of the major concerns our member banks have with the proposed Rule. The Rule creates substantial risk that may lead banks to abandon overdraft protection, a service that customers want to utilize when necessary. We strongly urge the CFPB to withdraw the proposed Rule.

Thank you for the opportunity to offer comment on the proposed Rule. If you have any questions, please feel free to contact me.

Very best regards,

A handwritten signature in cursive script that reads "Linda Navarro".

Linda Navarro
President and CEO
Oregon Bankers Association & Community Banks of Oregon